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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Revision of the Commission's)
Rules To Ensure Compatibility) CC Docket No. 94-102
With Enhanced 911 Emergency) RM-8143
Calling Systems)
)

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**PETITION FOR RECONSIDERATION
OF AT&T WIRELESS SERVICES, INC.**

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules,^{1/} respectfully requests reconsideration of certain aspects of the Commission's decision in the above-captioned proceeding.^{2/} As a leading provider of wireless services, AT&T has strongly supported the development and enhancement of 911 services.^{3/} In its present form, however, the Commission's Order may impede the delivery of high quality, reliable 911 services by wireless providers. Rather than optimizing the delivery and processing of 911 calls, the Order will result in confusion and further delay.

^{1/} 47 C.F.R. § 1.429.

^{2/} In the Matter of Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-102, RM-8143 (rel. July 26, 1996) ("Order").

^{3/} See, e.g., Comments of AT&T Corp., filed Jan. 9, 1995 ("AT&T Comments"); Reply Comments of AT&T Corp., filed March 17, 1995 ("AT&T Reply Comments").

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INTRODUCTION

The Order presents several barriers to the smooth implementation of wireless E911. First, the Order fails to provide a satisfactory approach to cost recovery. The record demonstrates the need for clear cost recovery standards at the federal level to avoid the sort of state-by-state wrangling that could delay the rollout of wireless E911 services. These services benefit society as a whole as well as wireless subscribers, and their costs should be allocated accordingly.

Second, the Order unjustifiably requires carriers to forward calls that do not transmit a code identification. The record demonstrates that this mandate presents serious technical challenges and places an undue burden on wireless carriers and subscribers. Contrary to the Commission's suggestion, wireless carriers are not comparable to the owners of pay telephones, and wireless carriers should not be forced to assume the same burdens.

Finally, the Order unfairly forces wireless carriers to assume liability for delivering 911 calls. The Order effectively tells wireless carriers to allocate the risk of such liability in their subscriber contracts but simultaneously requires them to provide service to callers with whom they have no contractual relationship. At a minimum, the liability rules governing wireless carriers should be comparable to those covering wireline carriers to preserve parity among types of telephony services.

I. THE COMMISSION MUST PROVIDE GUIDANCE FOR THE RECOVERY OF SYSTEM UPGRADE COSTS

The Commission's failure to provide a mechanism for wireless service providers to recover the costs of equipment upgrades is unfair and may seriously delay rollout of wireless E911. The Commission claims that the record does not demonstrate the need for a particular

E911 cost recovery mechanism.^{4/} As AT&T noted in its comments in this docket, however, the deployment of E911 services raises a number of issues that must be addressed to produce a fair funding mechanism, such as the compatibility of wireless and wireline services, the merits of various funding mechanisms, and the equity of distributing costs among various industry segments.^{5/} Without careful consideration of these issues, the wide disparity between the funding mechanisms likely to result will inevitably discriminate against wireless subscribers.^{6/} Indeed, the fundamental nature of these matters requires that the Commission address them.^{7/}

The Commission's statement that "inflexible Federal prescription" will stifle "innovative cost recovery solutions tailored to local conditions and needs"^{8/} simply ignores the importance of parity where wireless E911 is concerned. State-by-state disputes could block efficient implementation of wireless E911. Local conditions and needs should not be allowed to interfere with the national policy of encouraging expeditious rollout of these important services.

^{4/} Order at ¶ 89.

^{5/} See AT&T Comments at 43; AT&T Reply Comments at 28.

^{6/} These costs will be reflected both in higher subscriber charges and in the transaction costs resulting from the existence of multiple competing funding regimes.

^{7/} Mobile Communications Corp. of America v. FCC, 77 F.3d 1399, 1403 (D.C. Cir. 1996) (remanding case for reconsideration of petitioner's arguments). See also Schurz Communications, Inc. v. FCC, 982 F.2d 1043, 1049-51 (7th Cir. 1992) (Posner, J). See also Cinderella Career and Finishing Schools, Inc. v. FTC, 425 F.2d 583, 586 (D.C. Cir. 1970) (agency's independent determination absent a basis in the record cannot be sustained).

^{8/} See Order at ¶ 90.

With respect to the cost recovery principles themselves, wireless service providers and their customers should not be required to bear the entire costs of implementing enhanced 911 services. Access to E911 benefits subscribers and nonsubscribers alike. Wireless subscribers use 911 services to call for help for themselves, but they often call on behalf of strangers who need assistance in an emergency. The Commission itself has recognized the broad public benefits of implementing wireless E911.^{9/} Accordingly, the Commission should commence a proceeding to address methods for cost recovery that will ensure that all industry segments contribute to the development of the wireless E911 infrastructure.^{10/}

II. REQUIRING CARRIERS TO FORWARD CALLS THAT DO NOT TRANSMIT A CODE IDENTIFICATION WILL SERIOUSLY IMPEDE THE E911 SYSTEM

The Commission's Notice proposed to require carriers to forward only those 911 calls that originate from "service initialized" handsets, meaning (1) all of the carrier's subscribers in its home service area and (2) all users authorized to roam on a carrier's network.^{11/} Despite the fact that all commenters urged the Commission not to adopt the proposal of the Ad Hoc Alliance for Public Access to 911 to require carriers to transmit calls from non-service initialized phones,^{12/} the Order mandates transmission of all 911 calls, even those

^{9/} See id. at ¶ 5.

^{10/} See AT&T Comments at 43; AT&T Reply Comments at 28.

^{11/} Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Notice of Proposed Rulemaking, 9 FCC Rcd 6170, 6177 (1994) ("Notice").

^{12/} See Order at ¶ 26.

originating from wireless mobile handsets that do not transmit a code identification to any PSAP that has formally requested transmission of such calls.^{13/}

The Commission concluded that this radical departure from the Notice's proposal is warranted because "the universe of potential 911 callers . . . is somewhat larger" than the groups covered by the rule proposed in the Notice.^{14/} By the same reasoning, the Commission could require wireline carriers to connect 911 calls placed from telephones that have been disconnected.^{15/} Needless to say, the Commission would not seriously propose that wireline telephones should transmit 911 calls under those circumstances. It makes no sense, then, to analogize mobile handsets to "pay telephones" and impose on wireless subscribers the costs that are usually imposed on providers of pay phones.^{16/}

The Commission acknowledges that requiring all 911 calls to be forwarded -- even if the mobile handset lacks a code identification -- presents difficult technical problems for service providers.^{17/} For example, placing 911 calls from handsets without a code identification will render ANI and call-back features useless. If callers expect these features to be operative, when in fact they are not, it may create confusion, increase waiting time for emergency response, and even threaten the efficacy of the 911 system. A caller who could have used another telephone will have lost precious time by relying on technology that will

^{13/} Id. at ¶¶ 29, 37, and 39.

^{14/} Id. at ¶ 32.

^{15/} Service disconnection may be attributable to a number of legitimate reasons, from consumer choice to repeated failure to pay a bill.

^{16/} See Order at ¶ 37.

^{17/} Id. at ¶ 38.

not relay information as expected. In addition, because wireless carriers may be providing 911 to several PSAPs from the same switch,^{18/} calls placed from mobile handsets lacking code identification may be switched to the wrong PSAP. Where local jurisdictions have conflicting mandates, roaming problems will also be exacerbated. Finally, fraudulent calls from non-service-initialized handsets may tie up scarce lines, and it may be impossible to investigate their source.

These issues are not new; they have been discussed by numerous consumer and industry groups,^{19/} and there is no basis for the Commission to ignore those findings. The Commission's reliance on PSAP administrators to address implementation problems through "cooperation,"^{20/} will not immediately resolve them, and could delay seamless implementation of E911. In light of the concerns expressed in the record, the solution adopted by the Commission is not "a reasonable response to a problem that the agency was charged with solving."^{21/}

^{18/} Id. at ¶ 40.

^{19/} See Letter from Thomas E. Wheeler, president of the Cellular Telecommunications Industry Association, to Reed E. Hundt, Chairman of the Federal Communications Commission, February 12, 1996; Cellular Telecommunications Industry Association, et al., "Public Safety-Wireless Industry Consensus [on] Wireless Compatibility Issues, CC Docket 94-102," February 1996.

^{20/} See Order at ¶ 40.

^{21/} Schurz, 982 F.2d at 1049 (citing Bowen v. American Hosp. Ass'n, 476 U.S. 610, 626-27 (1986) (plurality opinion)).

III. WIRELESS CARRIERS SHOULD BE INSULATED FROM LIABILITY FOR DELIVERING 911 CALLS

The Commission should reconsider its decision not to immunize wireless carriers from liability for 911 calls.^{22/} Wireless carriers should be subject to the same "gross and wanton negligence" standard applied to wireline carriers by many states.^{23/} In the alternative, the Commission should require that states treat wireless carriers the same as wireline carriers with respect to liability. Such parity is consistent with the statutory goal of according similar regulatory treatment to providers of functionally equivalent services.^{24/}

Of course, the immunity enjoyed by wireline carriers may in some cases result from provisions included in local exchange tariffs. This fact, though, only proves that the Commission should establish a minimum standard of protection for wireless carriers. Wireless carriers must provide access to 911 for all callers, even those with whom they do not have any contractual relationship.^{25/} As a consequence, wireless carriers cannot contractually insulate themselves from liability when non-subscribers use their systems.^{26/}

^{22/} See Order at ¶ 99.

^{23/} See, e.g., Carter's Custom Tile & Remodeling, Inc. v. Southwestern Bell Tel. Co., 834 S.W.2d 892 (Mo.Ct.App. 1992); Bulbman, Inc. v. Nevada Bell, 108 P.2d 588 (Nev. 1992).

^{24/} Cf. 47 U.S.C. § 332(d) (defining commercial mobile services to include the "functional equivalent" of such service); H.R. Rep. No. 103-213, 103d Cong. 1st Sess. 494 (1993).

^{25/} See Order at ¶¶ 29-46.

^{26/} AT&T also is concerned about carrier liability for disclosing calling party number, location and other call related information to emergency services personnel. The Commission has requested that the Department of Justice provide a legal opinion as to whether Communications Assistance for Law Enforcement Act (CALEA) or other electronic
(continued...)

The Commission's concern about displacing state authority in this context is misplaced.^{27/} As Congress has found, CMRS services by their nature "operate without regard to state lines as an integral part of the national telecommunications infrastructure."^{28/} CMRS calls that begin as intrastate calls may become interstate because of the mobile nature of CMRS traffic. Also, the nationwide roaming capability offered by many CMRS providers sometimes results in interstate calls appearing to be intrastate. For these reasons, Congress enacted section 332(c) to preempt state rate and entry regulation of CMRS. To achieve the goals of the Communications Act and provide a national framework for wireless access to E911 service, wireless carriers must be allowed to design a system that crosses state jurisdictional boundaries. If the architects of that system cannot count on a single national standard of liability, the standard should at least be consistent within each state. Anything

^{26/}(...continued)

surveillance laws preclude telecommunications service providers from providing such information without a subpoena or court order. See Order at ¶¶ 95-98. AT&T believes that the Department's opinion should be available for review and comment because carriers that disclose subscriber information to the government or its agents without proper legal authorization may be subject to civil penalties absent a good faith belief that such disclosure was statutorily allowed. See, e.g., 18 U.S.C. § 2707(d)(1). Moreover, an industry standard to implement CALEA is being developed at this time and there is a significant dispute among industry and law enforcement representatives regarding whether CALEA requires carriers to design and implement systems that will provide location information to law enforcement in real time, whether or not a call is in progress, thereby allowing the cellular phone to be used as a mobile tracking device. The Department has stated that it will challenge any standard that does not include a location information delivery mechanism. AT&T believes that the Department's opinion should not address this issue because the E911 proceeding is not the proper forum for its resolution. In any event, AT&T requests that the Commission make the Department's opinion available once it is received and take comment on it before announcing its determination.

^{27/} See Order at ¶ 100.

^{28/} H.R. Rep. No. 103-111, 102d Cong. 1st Sess. 260.

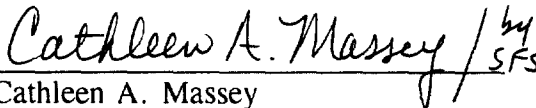
less would frustrate the congressional objective of "foster[ing] the growth and development of mobile services."^{29/}

CONCLUSION

For the foregoing reasons and as more fully set forth above, the Commission should reconsider its Order in the above-captioned proceeding.

Respectfully submitted,

AT&T WIRELESS SERVICES, INC.


Cathleen A. Massey
Vice President - External Affairs
1150 Connecticut Avenue, N.W.
4th Floor
Washington, D.C. 20036
202/223-9222

Howard J. Symons
Sara F. Seidman
Fernando R. Laguarda
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
202/434-7300

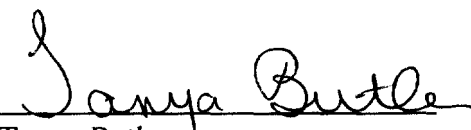
September 3, 1996

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^{29/} Id.

CERTIFICATE OF SERVICE

I, Tanya Butler, hereby certify that on this 3rd day of September 1996, I caused copies of the foregoing "Petition for Reconsideration of AT&T Corp." to be sent by messenger(*) to the following:


Tanya Butler

Michelle Farquhar
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

David Furth
Chief
Commercial Wireless Division
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Rosalind Allen
Associate Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Karen Brinkman
Associate Bureau Chief
Federal Communications Commission
Wireless Telecommunications Bureau
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Peter Wolfe
Federal Communications Commission
2025 M Street, N.W., Room 7122
Washington, D.C. 20554

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